

# EXHIBIT A



## E. Joshua Rosenkranz

*Partner*

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### Profile

Joshua Rosenkranz heads the firm's Supreme Court and Appellate Litigation practice.

A former law clerk to U.S. Supreme Court Justice William J. Brennan Jr. and then-Judge Antonin Scalia on the D.C. Circuit, Mr. Rosenkranz has personally argued more than 170 appeals in state and federal appellate courts across the nation and has served as attorney of record in some 1,500 other appeals.

*The American Lawyer* named Mr. Rosenkranz "Litigator of the Year" in its January 2012 edition, dubbing him "the Defibrillator" based on his streak of appellate wins for companies that "appeared to be at death's door." In naming him an "Appellate MVP" for 2011, *Law360* notes: "Rosenkranz is heralded by his colleagues as a brilliant strategic mind with a knack for swaying judges and crafting written arguments that sing off the page." *Benchmark Litigation* and *Benchmark Appellate* 2012 list Mr. Rosenkranz as a "Litigation Star," quoting the CEO of a client: "I think Joshua Rosenkranz is one of the finest lawyers I've ever seen." *Chambers USA* named him one of two lawyers in the top tier of appellate lawyers in New York in 2009. The 2011 version of *Chambers USA* reported, "He wins accolades for his 'brilliant analysis and judgment.' Clients appreciate how he 'rethinks every case from the ground up,' and add: 'He can take the most complicated legal or technological issue and present it in a way that seems like common sense.'" And the 2012 version added: "His briefs are quite simply beautiful," sources report, whilst clients describe his courtroom presence as 'both commanding and accessible at the same time.' He has the 'perfect combination of persuasiveness, intelligence, wit, and deference.'" *Legal 500* describes him as "a Superman" and "an excellent orator, strong strategist, and overall outstanding advocate."

Mr. Rosenkranz's practice covers a wide range of subjects, including securities, intellectual property, antitrust, federal preemption, insurance law, corporate governance, criminal law and constitutional litigation. Among his recent clients are Apple, DIRECTV, DISH Network, Facebook, First Republic Bank, Intel,

### Practices

- Appellate & Supreme Court
- Intellectual Property
- Commercial Litigation
- Securities Litigation & Regulatory Enforcement
- Antitrust & Competition

### Education

- J.D., *magna cum laude*, Georgetown University Law Center, 1986
- B.A., *summa cum laude*, *Phi Beta Kappa*, (Columbia University, 1979-81), Chemistry, Case Western Reserve University, 1983

### Clerkships

- Hon. William J. Brennan, Jr., U.S. Supreme Court
- Hon. Antonin Scalia, U.S. Court of Appeals, D.C.



Merck KGaA, Morgan Stanley, Nintendo, PG&E and UBS.

Clients turn to Mr. Rosenkranz to win the highest stakes appeals, including appeals in cases that threaten the very survival of a business. He represented DISH Network in one of the most high-profile patent appeals in the country, successfully overturning an infringement finding that yielded US\$400 million in damages and an injunction that ordered the satellite TV company to turn off the recording capabilities of millions of customers. He represented Facebook in the high-profile battle waged by the founder's Harvard classmates who have laid claim to the idea for Facebook, recently winning a ruling from the Ninth Circuit ending the lawsuit. He also represented MGA Entertainment in the most high-profile copyright/trademark appeal in the country, which successfully overturned a court's life-threatening order to turn over the entire worldwide Bratz trademark portfolio to competitor Mattel. He currently represents Apple in the Smartphone wars in an appeal about the validity of the patent on Apple's revolutionary touchscreen. He also represents Oracle in its high-profile copyright appeal against Google over whether Android impermissibly copies the Java platform.

Mr. Rosenkranz has played a leading role in more than a dozen Supreme Court cases, having argued eight in the past six years. In 2005, he successfully represented Merck KGaA in a Supreme Court case that the *National Law Journal* described as "the most significant patent infringement case to confront the biotech and pharmaceutical industries in a generation." He represented 36 law schools in a high-profile Supreme Court case against the Department of Defense. He also argued and won a case that many consider to be the most important employee benefits case of the decade. And in March 2013, Josh won a landmark victory in a Supreme Court case that rescued the estimated \$60 billion U.S. market of copyrighted goods manufactured abroad in *Kirtsaeng v. John Wiley Publishing*.

Mr. Rosenkranz was the founding president and CEO of the Brennan Center for Justice at New York University School of Law, one of the country's foremost public interest firms. Over the course of eight years, he was the Brennan Center's chief strategist on litigation and public policy advocacy. Under his direction, the center represented parties in connection with more than 50 cases (including three at the U.S. Supreme Court) and filed almost 40 amicus briefs (including 20 at the U.S. Supreme Court). Before creating the Brennan Center, Mr. Rosenkranz founded the Office of the Appellate Defender, a public defender office specializing in criminal appeals in New York state courts.

#### Supreme Court Engagements:

- ***Kirtsaeng v. John Wiley & Sons*:** Lead counsel in a landmark copyright case that rescued the estimated \$60 billion U.S. market of copyrighted goods manufactured abroad from the brink of potential disaster. The

Circuit

- Hon. Stephen F. Williams, U.S. Court of Appeals, D.C. Circuit

#### Honors

- "Litigator of the Year," *The American Lawyer*, 2012
- "Litigation Star," *Benchmark Litigation* and *Benchmark Appellate*, 2012-2013
- Nationally ranked as a top-tier appellate lawyer, *Chambers USA*, 2008-2013
- "Leading Lawyer," *Legal 500*, 2011-2013
- "Outstanding IP Litigator of the Year in New York," *Managing IP*, 2013
- "Appellate Lawyer of the Week," *National Law Journal*, April 2011.
- "Appellate MVP," *Law360*, 2011
- "Lawyer of the Week," and the month's "Lawyer in the Spotlight," *American Lawyer*, Sept. 2010
- Milton S. Gould Award for Outstanding Advocacy, 2010
- Society of American Law Teachers Human Rights Award, 2007

Court had split 4-4 when it previously addressed the issue. Mr. Rosenkranz won over the ninth Justice and flipped another vote, for a 6-3 win. SCOTUSBlog reported: “A common trope says that it is common for a case to be lost at oral argument but rare for one to be won. I am not so sure.... Joshua Rosenkranz managed to directly confront, and apparently defuse, the concerns of several Justices who seemed opposed to his position. This well might be the rare case of a victory at oral argument.”

- **Merck KGaA v. Integra LifeSciences:** As lead counsel, on behalf of Merck KGaA, persuaded the Supreme Court to reverse the Federal Circuit, 9-0, to grant a broad protection allowing pharmaceutical companies to perform experiments on promising drugs before a relevant patent had expired.
- **MetLife v. Glenn:** As lead counsel in an employee benefits case, persuaded the Supreme Court that courts must give less deference to an insurance company’s decisions to deny benefits than to the decisions of a neutral administrator, because the insurance company labors under a conflict of interest.
- **Rumsfeld v. FAIR:** Lead counsel in a Supreme Court case representing 36 law schools and an organization of 900 law professors in a suit challenging, on First Amendment grounds, the Solomon Amendment, a federal law requiring academic institutions to assist military recruiters.
- **Nevada Comm’n on Ethics v. Carrigan:** Lead counsel in a landmark Supreme Court about whether the First Amendment protects a legislator’s right to vote.
- **Fox v. Vice:** Lead counsel in persuading a unanimous Supreme Court that a court may not award attorneys’ fees against a civil rights plaintiff without showing that the fees would not have been incurred but for the plaintiff’s decision to plead a frivolous federal claim.
- **Van de Kamp v. Goldstein:** Lead counsel in a case about the scope of prosecutorial immunity.
- **Travelers v. PG&E:** Lead counsel arguing, on behalf of Pacific Gas & Electric, that an unsecured creditor cannot recover attorneys fees for intervening in a bankruptcy proceeding.
- **Kentucky Retirement Systems v. EEOC:** Leading role in successfully defending Kentucky against allegations of age discrimination in connection with the structure of its plan of retirement benefits for public employees, a case that threatened to invalidate thousands of plans in two dozen states.
- **Bruesewitz v. Wyeth:** Helped brief the major preemption victory for Wyeth, holding that plaintiffs claiming to have been harmed by childhood vaccines cannot bring lawsuits asserting that the vaccine should have been designed more safely.
- **McConnell v. FEC:** Leading role in representing Senators John McCain and Russell Feingold and other sponsors successfully fending off 11
- National Association for Law Placement Award of Distinction, 2005
- Fordham LGBT Law Students Association Serviceperson of the Year, 2005
- New York State Bar Association Award for Outstanding Contribution to Delivery of Defense Services, 1995
- Scribes Brief-Writing Award, 1993
- Rhodes Scholarship Finalist, 1985



consolidated lawsuits challenging the McCain-Feingold campaign finance reform measure, before a three-judge district court in Washington, D.C., and then the U.S. Supreme Court.

- **Legal Services Corp. v. Velazquez:** Leading role in a successful First Amendment challenge against the restrictions Congress imposed on lawyers funded by the Legal Services Corporation.
- **Shrink Missouri Gov't PAC v. Nixon:** Leading role in successfully defending Missouri's campaign contribution limit against a First Amendment challenge.

#### Representative Other Appeals:

- Lead counsel on behalf of **Facebook**, successfully defending in the Ninth Circuit a ruling finally ending a contentious litigation by competitors who claim to be the true owners of Facebook.
- Lead counsel in patent appeal to the Federal Circuit, successfully representing **DISH Network** in challenging an infringement finding that yielded US\$400 million in damages and injunction requiring DISH to turn off DVR functionality for millions of customers.
- Lead counsel in Ninth Circuit appeal, successfully challenging an injunction requiring **MGA Entertainment**, the maker of Bratz dolls, to abandon the line and turn over its entire US\$1 billion a year trademark portfolio to Mattel.
- Lead counsel successfully persuading the Second Circuit to dismiss a putative class action filed against **UBS** by shareholders seeking US\$800 million in lost "merger premium" for a failed merger.
- Lead counsel on behalf of **Intel** in Federal Circuit appeal, successfully defending the grant of summary judgment on a major patent-infringement case on flash memory.
- Ninth Circuit appeal and cert. opposition representing the **five major tobacco companies** in successfully fending off an antitrust challenge to the Master Settlement Agreement.
- Lead counsel in multiple cases across the country challenging state taxes that discriminate against satellite TV and in favor of cable.
- Successful appeal on behalf of **Visa International** and **Visa USA** of the largest verdict ever issued under California's unfair competition law, a restitution award with potential exposure of more than US\$800 million.

Mr. Rosenkranz has published numerous books, monographs, chapters and scholarly articles. He has also authored 18 op-eds or articles in major newspapers and magazines, including *The New York Times*, *The Washington Post*, *The Los Angeles Times*, *The Chicago Tribune*, *The Washington Monthly*, *The Boston Review*, *The National Law Journal* and *The American Prospect*.



## **Admitted In**

- New York



## Lisa T. Simpson

*Partner*  
Intellectual Property

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### Profile

Lisa T. Simpson is a partner in the New York office and a member of the Litigation and Intellectual Property Groups. Her practice is focused on the representation of retail, entertainment and technology companies. Ms. Simpson has handled a variety of matters in state and federal court of importance to such clients, ranging from intellectual property matters involving copyright, trademark, trade name, false advertising, rights of publicity, libel and defamation; to product liability and consumer class action litigation; to domain name, contract and licensing disputes.

Some of Ms. Simpson's notable cases include the following:

**Kirtsaeng v. John Wiley & Sons, Inc.:** Ms. Simpson recently obtained a victory in the U.S. Supreme Court on behalf of Petitioner Kirtsaeng concerning the application of the Copyright Act's first sale defense to foreign-manufactured goods.

**MGA Entertainment, Inc.** Ms. Simpson represented MGA in its appeal to the Ninth Circuit with respect to its copyright and ownership dispute with Mattel over the Bratz® dolls and obtained a complete reversal of the District Court's Order in MGA's favor. On retrial to a jury in the California district court, Ms. Simpson was a member of the trial team that obtained a complete victory for MGA. The jury held that MGA was the owner of the Bratz® dolls and found that Mattel was liable to MGA on its counterclaims.

**DISH Network, LLC.** Ms. Simpson currently represents DISH in its highly publicized copyright and breach of contract disputes with FOX, NBC, ABC and CBS in New York and California concerning DISH's Hopper DVR and successfully defeated Fox's motion for a preliminary injunction on DISH's PrimeTime Anytime and AutoHop features.

**Sanei International Co., Ltd.** Ms. Simpson successfully defeated two applications for preliminary injunction filed by designer JILL STUART against

### Practices

- Intellectual Property
- Copyright, Trademark & False Advertising Litigation & Counseling
- Commercial Litigation
- Life Sciences

### Education

- J.D., *with high honors*, Duke Law School, 1994
- A.B., *cum laude*, English, Duke University, 1991

### Honors

- Named as 2012 New York Super Lawyer - Metro
- Identified in *The New York Times Magazine* on List of Top Women Attorneys in the New York Metro Area, December 30, 2012
- Editor, *Duke Journal of Law & Contemporary*



Japanese retailer Sanei, and obtained dismissal of trademark, copyright and contract claims in litigations pending in SDNY. Ms. Simpson also represented Sanei in a separate trademark dispute over the fashion designer's trademark and name CHARLOTTE RONSON.

**NYC Triathlon.** Ms. Simpson obtained a preliminary injunction for NYC Triathlon in a trademark dispute over the use of its name, which included a judicial finding of secondary meaning in the NYC TRIATHLON service mark.

**Microsoft.** Ms. Simpson argued and won an appeal in New York's Appellate Division affirming the dismissal of a breach of contract action against Microsoft.

**Facebook, Inc.** Ms. Simpson represented Facebook in a variety of matters, including New York-focused litigation relating to the Winklevoss twins' claims of ownership of Facebook and matters implicating the Communications Decency Act (CDA) and the Electronic Communications Protection Act. In a matter of first impression in New York, she obtained a dismissal of all claims against Facebook based on CDA immunity.

**Wyeth.** Ms. Simpson represented Wyeth in a variety of matters, including:

- Advil®: the representation of Wyeth in connection with several product liability litigations involving the labeling and advertising of its over-the-counter analgesic, Advil®;
- Caltrate®: the dismissal of a consumer class action prior to class certification in a matter concerning the calcium supplement Caltrate® pending in New York state court; and
- Thimerosal-containing vaccines: the representation of Wyeth in hundreds of product liability litigations throughout the United States concerning injuries allegedly associated with the use of the preservative thimerosal in childhood vaccines.

**Dow AgroSciences.** In D.C. federal court, Ms. Simpson obtained the dismissal of state law claims brought by more than 300 residents of Ecuador alleging personal injuries from exposure to a commercial fungicide used on banana crops.

**iVillage/NBC.** Ms. Simpson represented iVillage (which was acquired by NBC in 2006) in several significant lawsuits dealing with, among other issues:

- the protection of the company's iBABY trademark;
- the value of certain disputed employee stock options;
- the unauthorized use of one of the company's Internet bulletin boards to anonymously post vulgar, obscene, derogatory and defamatory messages;

#### *Problems*

- Member, Moot Court Board, Duke Law School

#### **Memberships**

- New York Intellectual Property Law Association (NYIPLA)





## ORRICK

- the defense and prosecution of claims involving a licensing dispute over trademarks and rights of publicity; and
- the complete dismissal of all federal claims, namely trademark infringement, false advertising, dilution and cybersquatting, asserted against iVillage in the U.S. District Court for the Northern District of California based on iVillage's use of certain trademarks on its astrology Web site.

**MP3.com.** Ms. Simpson represented Internet music provider MP3.com in numerous litigations in which various record companies, including all the major records labels, asserted copyright claims arising from the launch of MP3.com's online music service. Ms. Simpson also represented MP3.com in litigation brought by several recording artists, as a purported class, who asserted various copyright claims against MP3.com and the major record labels.

Ms. Simpson currently serves as Hiring Partner for the New York Office. Ms. Simpson is also a member of the Professional Development Committee (PDC). Prior to joining the firm, Ms. Simpson was an associate at Donovan Leisure Newton & Irvine LLP, from 1994 to 1998.

### Speeches

- 2006-present: Guest Lecturer on Copyright and Trademark at Columbia Law School, Small Business Clinic.
- "*Kirtsaeng v. John Wiley & Sons, Inc.*: Statutory and Policy Perspectives," Current Developments in Copyright Law 2013, New York City Bar, June 4, 2013
- "A Matter of Import: Supreme Court's *Kirtsaeng* Decision Revisits First Sale Doctrine and Tackles Geographic Limitations on Exhaustion," The Copyright Society of the U.S.A., New York Chapter, April 30, 2013
- Addressed new developments under the Communications Decency Act ("CDA") and the Digital Millennium Copyright Act ("DMCA") for "New Social Media: Trademark, Copyright, Privacy and Patent Perspectives," New York City Bar, Women in IP, February 28, 2012
- "Trade Dress Protection and Store Brand/Private Labels," IP Trademark and Copyright Counsel Forum -- How to Protect Your Intellectual Property in a Changing World, November 10, 2009

### Select Publications

- "Food Litigation: An Evolving Landscape," *New York Law Journal*, co-author, May 10, 2012
- "Confidentiality: What It Means," *New York Law Journal Magazine*, Summer



Associate ed., Vol. 2, No. 3, June 2003

### **Admitted In**

- New York

### **Court Admissions**

Supreme Court of the United States

United States Courts of Appeals

- Second Circuit
- Ninth Circuit

United States District Court

- Southern District of New York
- Eastern District of New York
- Western District of New York



## Annette L. Hurst

*Partner*  
Intellectual Property

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### Profile

Annette L. Hurst, a partner in Orrick's San Francisco office, is a member of the Intellectual Property Group. She is an experienced trial lawyer who has tried patent, copyright, trade secret, trademark and business tort claims. Hurst was named "Litigator of the Week" by *The American Lawyer* for her work as co-lead counsel on the Mattel/MGA case. Every year since 2010, Hurst has been named one of the top 75 IP litigators in California by *The Daily Journal*. In January 2013, Hurst was named "Female Litigator of the Year—West" by *Benchmark Litigation*.

Ms. Hurst's recent notable engagements include the following.

- ***Kirtsaeng v. Wiley & Sons*** (U.S.): In one of the most significant copyright cases heard by the U.S. Supreme Court in the past decade, Ms. Hurst served as co-counsel and architect of the copyright strategy used to secure a 6-3 vote in favor of Orrick client Supap Kirtsaeng. The Court held that the doctrine of first sale under U.S. copyright law, which allows for legally acquired copyrighted works to be resold by their owners, applies to works made overseas. This ruling has broad implications for an estimated US\$60 billion in copyrighted goods manufactured abroad.
- ***Fox Networks v. DISH*** (C.D. Cal.): In October 2012, Hurst successfully defended against Fox's motion for preliminary injunction aiming to shut down the award-winning Hopper DVR and its PrimeTime Anytime and AutoHop features.
- ***Brocade Networks v. A10*** (C.D. Cal.): Hurst second-chaired the trial team that secured a US\$112M jury verdict in August 2012 in this patent, copyright, trade secret and business torts case.
- ***MGA v. Mattel*** (C.D. Cal.): Hurst led the team that made a successful turnaround of this copyright, trademark, trade secret and business torts case resulting in an affirmative judgment of US\$309 million against Mattel in 2011.

### Practices

- Intellectual Property

### Education

- J.D., New York University School of Law, 1990
- B.A., *magna cum laude*, Philosophy, Miami University, 1987
- B.S., *magna cum laude*, *Beta Gamma Sigma*, Business Administration, Miami University, 1987

### Honors

- Named to *Managing Intellectual Property's* list of "IP Stars" (2013)
- "Female Litigator of the Year - West," *Benchmark Litigation* (2013)
- Leading Lawyer, *Chambers USA* (2012)
- Named to the "Top 250 Women in Litigation," *Benchmark Litigation*



- **Oracle v. Google** (Fed. Cir.): Hurst is on the brief for Oracle on this high stakes copyright appeal.
- **SLB Toys USA, Inc. v. Wham-O** (C.D. Cal.): Hurst obtained a US\$6 million jury verdict for counter-claimant Wham-O on trademark infringement, dilution and false advertising claims, with enhancement for willful infringement and an additional US\$1.7 million attorneys' fee award.
- **Sky Technologies v. Ariba** (D. Mass.): Hurst obtained a great settlement for Ariba after two weeks of jury trial in this software patent infringement case.

Other notable representations include the following.

- **Sky v. Microsoft**: Representation of Microsoft in this successfully settled patent infringement matter.
- **Office Live LLC v. Microsoft**: Representation of Microsoft in this successfully settled trademark infringement matter.
- **Laureate Education, Inc. v. Teachscape**: Representation of Laureate Education and Canter & Associates in dual actions alleging copyright infringement and trade secrets misappropriation in the online distance-learning field.
- **Gymboree**: Representation of Gymboree and Gym-Mark, Inc. in copyright infringement actions brought against Babies 'R' Us, Mervyn's and Children's Apparel Network.
- **VEW Ltd.**: Representation of Vera Wang's licensing entity in a trademark dispute concerning the mark SIMPLY VERA.

Ms. Hurst's published appellate decisions include the following.

- *Mattel v. MGA Entertainment*, 616 F.3d 904 (2010) (successful reversal of injunction against MGA) (on the brief).
- *Mattel v. Walking Mtn. Prods.*, 353 F.3d 792 (9th Cir. 2003) (argued for appellee and cross-appellant) (successful affirmance of summary judgment of fair use of copyright and trademark; successful reversal on cross-appeal from denial of attorneys' fee award).
- *DVD Copy Control Ass'n, Inc. v. Bunner*, 31 Cal.4th 864 (2003) (brief amicus curiae of IEEE-USA).
- *Sony v. Connectix*, 203 F.3d 596 (9th Cir. 2000) (brief amicus curiae of IEEE-USA).
- *Catchpole v. Brannon*, 36 Cal.App.4th 237 (1995) (argued for appellant) (successful reversal of defense verdict in sexual harassment case on the ground of gender bias of the trial judge).

Ms. Hurst's community and professional activities include her current service as

(2012)

- Named to *The Daily Journal's* list of "Top 75 IP Litigators in California" (2010-2013)
- *Lawdragon* 500 Leading Lawyers in America in 2011 and 2012
- Named 2011 "California Lawyer of the Year" by *California Lawyer* magazine
- Named to *The Daily Journal's* list of the "Top 10 Trademark Lawyers in California" in 2008
- Named to *San Francisco Magazine's* "Top 50 Women Attorneys in Northern California" (2012)
- Named in *Legal 500* for Orrick's Tier 1 band in trade secret litigation (2011)
- Named "Litigator of the Week" by *The American Lawyer*, April 22, 2011
- Named by *The National Law Journal* as one of its top "40 Under 40" in 2005
- Named by *The Daily Journal* as one of the "Top 20 Lawyers under 40" in 2004
- Repeatedly listed as a "Northern California Top 100 Super Lawyer," "Top 50 Female Super Lawyer"



the President of the Lafayette Elementary School PTA, past membership on the Board of Directors of the Volunteer Legal Services Program and Board of Directors of the Bar Association of San Francisco for which she was chair of the Finance and Investments Committee. She also is a past member of the Board of Directors of the Legal Aid Society of San Francisco and the Board of Governors of the Association of Business Trial Lawyers, Northern California Chapter, as well as a past president of the Barristers Club.

### Speeches

- "Copyright Protection in the Digital Television Age," USC IP Institute, March 14, 2013.
- Ethics & E-Discovery, January 18, 2012.
- "Keyword Advertising and Trademark Infringement, Strategies for Protecting Brands and Avoiding Liability in Online Advertising," Strafford Legal Teleconferences, March 12, 2009.
- "Whose Home Run is it Anyway," ABA IP/Antitrust Section Teleseminar, February 19, 2009.
- "Real Lawyers, Real Cases," McCarthy Institute Seminar on Fair Use, University of San Francisco, November 1, 2008.
- "Virtual Property in the Real World," Gamer Technology Law Conference, March 16-17, 2006.
- "Does the offering/use of Internet keywords constitute direct and/or secondary trademark infringement?," ABA IP Law Conference, June 23, 2005.
- "Copyright Law: Basics and Hot Topics," Xerox PARC Forum, October 24, 2002.

### Select Publications

- Author, "California District Court holds user-generated content services are eligible for protection under the safe harbor provisions of the DMCA," Orrick Client Alert, January 8, 2009.
- Co-Author, "Federal Circuit Clamps Down on East Texas Forum Shopping in Patent Cases," Orrick Client Alert, December 29, 2008.
- "Grokster Deconstructed: The Ruling Offers Little Predictability – Other Than for More Litigation," Intellectual Property and Technology Law for the Pacific Rim, October 24, 2005.
- "WhenU Ruling Goes to Legal Extreme – Court Loses Sight of Consumer

and "Top IP Litigator" by the *Northern California Super Lawyers Magazine*

- Martindale-Hubbell "AV" Rated

### Memberships

- Litigation and Intellectual Property Sections, ABA
- AIPLA
- IP Inns of Court



Protection Function of Lanham Act," *San Francisco Daily Journal*,  
September 27, 2005.

### **Admitted In**

- California

### **Court Admissions**

Supreme Court of the United States

United States District Court

- Central District of California
- Eastern District of California
- Southern District of California
- Northern District of California
- District of Colorado

United States Courts of Appeals

- First Circuit
- Second Circuit
- Third Circuit
- Ninth Circuit



## Marc R. Shapiro

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### Profile

Marc R. Shapiro is a managing associate in Orrick's New York office. He is a member of the General Litigation and Supreme Court and Appellate Practice Groups.

Mr. Shapiro represents clients in federal and state courts at the trial and appellate levels. His practice spans a number of areas including patent, copyright, trademark, contract law, real estate, insurance, and civil rights.

Recent engagements include drafting the certiorari petition and merits briefs in a copyright case before the United States Supreme Court concerning the scope of the first sale doctrine, briefing on behalf of a multinational banking and financial services company in a case involving a multi-billion dollar real estate dispute, briefing on behalf of a leading biotechnology company in a patent infringement action concerning an herbicide-resistant gene, briefing on behalf of a medical devices manufacturer in a patent infringement action involving cancer screening equipment, representation of life insurance policyholders in a series of cases involving premium financing, and briefing and arguing the federal appeal of a denial of a preliminary injunction in a case involving juvenile abuse at state detention facilities.

Mr. Shapiro served as a law clerk to Judge Betty B. Fletcher of the U.S. Court of Appeals for the Ninth Circuit. Prior to joining Orrick, Mr. Shapiro worked as an appellate and post-conviction attorney for the Equal Justice Initiative. In that capacity, he engaged in trial level and appellate representation of clients in both state and federal court, including two cases that were briefed and argued before the United States Supreme Court.

### Admitted In

- Alabama

### Education

- J.D., *cum laude*, New York University School of Law, 2003
- B.A., *summa cum laude*, *Phi Beta Kappa*, Binghamton University, State University of New York, 2000

### Clerkships

- The Hon. Betty B. Fletcher, U.S. Court of Appeals, Ninth Circuit, 2012-13

### Honors

- *Journal of Legislation and Public Policy*, Articles and Notes Editor



- New York

### **Court Admissions**

Supreme Court of the United States

United States Courts of Appeals

- Second Circuit
- Ninth Circuit

United States District Court

- Middle District of Alabama



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## attorneys

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## Alex Feerst

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B.A., Columbia University, English and Anthropology, 1998

Ph.D., Duke University, English, 2005

J.D., Columbia Law School, 2009

Alex has litigated intellectual property disputes across a range of sectors, including e-commerce, medical devices, semiconductors, and social networking, for clients such as eBay and Varian Medical Systems. His copyright cases include *Golan v. Holder* (First Amendment challenge to removing works from the public domain, heard at the Supreme Court in 2011), *Fairey v. The Associated Press* (over the Obama "Hope" image), and *Supap Kirtsaeng v. John Wiley & Sons* (concerning the legality of reselling copyrighted goods made abroad, heard at the Supreme Court in 2012).

Alex began his career as a fellow at Stanford Law School's Fair Use Project and then worked at Orrick, Herrington & Sutcliffe. In law school, he was a Stone Scholar, a Holthusen-Schindler Fellow, Co-Editor-in-Chief of the Columbia Journal of Asian Law, and extern for the Honorable Barbara S. Jones of the Southern District of New York and the Honorable Sonia Sotomayor of the Second Circuit Court of Appeals. Before law school, Alex earned a PhD in English at Duke University and then taught American literature and literary theory at Macalester College.

Alex serves on the board of the San Francisco Intellectual Property Law Association and the Continuing Legal Education committee of the American Bar Association's Intellectual Property Law section. He volunteers as a mediator through California Lawyers for the Arts.

During his down time, he enjoys strong coffee and meandering novels.



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## Nicholas F. Lenning

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### Profile

Nicholas Lenning is a litigation associate in Orrick's Washington, D.C., office.

Nick has worked extensively on complex multi-state litigation in the discovery and trial phases. He has also assisted on numerous appellate matters, including *Kirtsaeng v. John Wiley & Sons, Inc.* before the United States Supreme Court.

### Admitted In

- District of Columbia
- Virginia

### Education

- J.D., Duke Law School
- B.A., Sociology, and Law, Societies, & Justice, University of Washington

### Clerkships

- Hon. Paul L. Friedman, U.S. District Court, District of Columbia, 2014-16

### Externships

- Federal Public Defender for the Eastern District of North Carolina
- Operations & Int'l Law Directorate, AF JAG, Pentagon

### Honors

- Editor, *Law & Contemporary Problems Journal*
- Moot Court Board
- Mock Trial Team



## Brian D. Ginsberg

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Supreme Court and Appellate

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### Profile

Brian Ginsberg is an appellate litigator in Orrick's New York office. He handles matters in the Supreme Court of the United States and other appellate courts. He also counsels clients at earlier stages of litigation to identify and evaluate potential appellate issues. Prior to joining Orrick, Brian was an associate in the Supreme Court and appellate litigation practice group of Covington & Burling LLP.

Brian's appellate experience spans a wide range of subject areas. He has contributed to cases involving patents, copyrights, immigration, white-collar crime, healthcare, financial institutions, anti-terrorism, and many other subjects. He recently second-chaired a billion-dollar copyright case in the Supreme Court of the United States. And he has personally argued multiple appeals in the lower courts dealing with the law of criminal procedure.

Brian also focuses his energy on improving the legal profession. He maintains a substantial pro bono practice, providing appellate representation to individuals unable to afford legal services. And he regularly serves as a moot court judge at some of the nation's leading law schools, helping to train the next generation of appellate advocates.

Brian clerked for Judge Michael A. Chagares of the U.S. Court of Appeals for the Third Circuit and for Judge Anita B. Brody of the U.S. District Court for the Eastern District of Pennsylvania.

Before becoming a lawyer, Brian was a mathematician. He focused on the field of number theory and published multiple scholarly articles, including one solving a 165-year-old problem.

### Recent Engagements

Brian's recent Supreme Court matters have included:

### Education

- J.D., Columbia Law School, 2007
- M.S., Mathematics, Yale University, 2004
- B.S., *cum laude*, with *departmental distinction*, Mathematics, Yale University, 2004

### Clerkships

- Hon. Michael A. Chagares, U.S. Court of Appeals, Third Circuit, 2008-09
- Hon. Anita B. Brody, U.S. District Court, Eastern District of Pennsylvania, 2007-08

### Honors

- Harlan Fiske Stone Scholar, Columbia Law School
- Articles Editor, Columbia Human Rights Law Review



## ORRICK

***Kirtsaeng v. John Wiley & Sons Publishing (pending)***. Brian second-chaired a copyright case concerning the scope of the "first-sale" doctrine, the rule that permits people to buy copyrighted goods and re-sell them without obtaining permission from the copyright owner.

***Southern Union Co. v. United States (2012)***. Brian co-authored a joint amicus brief on behalf of the U.S. Chamber of Commerce and the National Association of Criminal Defense Attorneys urging the Court to overturn a criminal fine imposed on a corporation on the ground that the fine violated the Sixth Amendment. The Court agreed and invalidated the fine, favorably citing the amicus brief.

***Demiraj v. Holder (2012)***. Brian co-authored an amicus brief on behalf of more than 40 former federal law-enforcement officers -- including a former Attorney General of the United States and a former Director of the FBI -- urging the Court to reverse a decision denying asylum to the wife and daughter of an immigrant who agreed to help the federal government prosecute a notorious Albanian criminal. After the brief was filed, the federal government voluntarily granted asylum, favorably ending the case. The New York Times called the brief the "most interesting" of all the amicus submissions in the case.

Other recent appellate matters have included:

***McKinney v. New York (N.Y. App. Div. 4th Dep't 2012)***. Brian briefed and argued an appeal of a criminal conviction for felony fatal hit-and-run on the ground that the conviction violated the New York state constitution. The court agreed and held the conviction unconstitutional.

***MySpace, Inc. v. GraphOn Corp. (Fed. Cir. 2012)***. After a major social media company won a favorable patent claim construction ruling from an appellate panel, the loser petitioned for further review by the full court. Brian co-authored a brief in opposition, and the court ultimately denied the rehearing petition.

***Hall v. Warden (6th Cir. 2011)***. Brian briefed and argued an appeal of a decision dismissing a petition for writ of habeas corpus as barred by the statute of limitations.

***Hill v. Coates (N.Y. App. Div. 1st Dep't 2010)***. Brian co-authored an appellate brief for an artist/philanthropist engaged in a dispute with a third-generation oilman over the right to manage a substantial portfolio of assets held in a trust. The court agreed with the artist/philanthropist's argument and declared her the rightful manager. When the oilman made a motion for further appellate review in a higher court, Brian filed a brief in opposition, and the higher court denied the motion.

- DeForest Prize in Mathematics, Yale University
- John Alan Lewis Prize in Mathematics, Yale University
- Benjamin F. Barge Prize in Mathematics, Yale University
- Henry P. Wright Prize in English, Yale University

### Memberships

- Pro Bono Panel, U.S. Court of Appeals, Seventh Circuit
- Pro Bono Panel, U.S. Court of Appeals, Ninth Circuit
- Pro Bono Panel, U.S. Court of Appeals, Tenth Circuit
- Historical Society, U.S. Court of Appeals, Third Circuit
- Mathematical Association of America
- Yale Club of Chicago



## Select Publications

- Always Be Disclosing: The Prosecutor's Constitutional Duty to Divulge Inadmissible Evidence, 110 W. Va. L. Rev. 611 (2008)
- Therapists Behaving Badly: Why the Tarasoff Duty Is Not Always Economically Efficient, 43 Willamette L. Rev. 31 (2007)
- A "Base" Count of the Rationals, 78 Mathematics Mag. 227 (2005)
- Tarasoff at Thirty: Victim's Knowledge Shrinks the Psychotherapist's Duty to Warn and Protect, 21 J. Contemp. Health L. & Pol'y 1 (2004)
- Midy's (Nearly) Secret Theorem: An Extension after 165 Years, 35 C. Mathematics J. 26 (2004)

## Admitted In

- New York
- District of Columbia

## Court Admissions

Supreme Court of the United States

United States Courts of Appeals

- Second Circuit
- Third Circuit
- Sixth Circuit
- Seventh Circuit
- Ninth Circuit
- Tenth Circuit
- Eleventh Circuit
- Federal Circuit